

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LORI AUSTIN,

Defendant-Appellee.

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UNPUBLISHED

September 25, 1998

No. 204602

Recorder's Court

LC No. 97-500957

Before: Hood, P.J., and Griffin and O'Connell, JJ.

MEMORANDUM.

Plaintiff appeals by right the Recorder's Court order quashing a second-degree criminal sexual conduct charge, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and dismissing the case against defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The charge against defendant was based on the sexual assault of defendant's daughter by defendant's boyfriend, Barry Knowles. The daughter testified that she told defendant about two prior assaults by Knowles. Defendant told her she would cause Knowles to move out, but defendant failed to do so. Knowles assaulted the daughter again, leading to the instant charge. Plaintiff prosecuted defendant on the theory that she was an aider and abettor to the crime.

To establish guilt on an aiding and abetting theory, the prosecutor must show that a crime was committed by defendant or another, that the defendant performed acts or otherwise gave encouragement that aided or assisted in the commission of the crime, and that the defendant either intended that the crime take place or acted with the knowledge that the principal intended to commit the crime. *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). An aider and abettor's state of mind may be inferred from all the facts and circumstances. *Id.*

A defendant must be bound over for trial if evidence is presented at the preliminary examination that a crime has been committed and there is probable cause to believe that defendant was the perpetrator. *People v Melotik*, 221 Mich App 190, 197; 561 NW2d 453 (1997). This Court's review of the trial court's decision is de novo. We must determine anew if the magistrate committed an abuse of discretion in determining whether there was probable cause to believe that defendant

committed the charged offense. *People v Tower*, 215 Mich App 318, 320; 544 NW2d 752 (1996). We find no abuse of discretion here.

There was insufficient evidence to find that defendant aided and abetted the criminal sexual assault of her daughter. While defendant may have failed to take the steps necessary to protect her daughter, there is no showing that she intended the commission of the crime, or gave aid and encouragement to Knowles with knowledge that he would commit the crime. The court properly granted the motion to quash.

Affirmed.

/s/ Harold Hood

/s/ Richard Allen Griffin

/s/ Peter D. O'Connell